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OFFICE OF PETITIONS

In re Application of
Christian Eisenberger et al
Application No. 09/744,871
Filed: July 11, 2001
Attorney Docket No. 56/346

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:DECISION DISMISSING PETITION
:UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition filed March 12, 2002, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/EP99/0492, filed July 14, 1999).

The petition is dismissed as moot for the reasons stated below.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

37 CFR 1.78(a)(2)(ii)¹ indicates that the time periods set forth therein do not apply if the later-filed application is: (1) an application for a design patent; (2) an application filed under 35 U.S.C. § 111(a) before November 29, 2000; and (3) a **nonprovisional application which entered the national stage after compliance with 35 U.S.C. § 371 from an international application filed under 35 U.S.C. § 363 before November 29, 2000.**

Since the instant nonprovisional application is the national stage entry of an international application filed prior to November 29, 2000, the provisions of 37 CFR 1.78(a)(3) for acceptance of a late claim for priority do not apply to the subject

¹ 37 CFR 1.78(a)(2) was amended to place its provisions in separate paragraphs (a)(2)(i) through (a)(2)(iv) for clarity. See **Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications**, 66 FR 67087 (December 28, 2001); 1254 Off. Gaz. Pat. Office, 121 (January 22, 2002) (final rule).

nonprovisional application. Accordingly, the petition is dismissed as involving a moot issue.

According to MPEP 1893.03(c), page 1800-149, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371. Therefore, the supplemental preliminary amendment filed on March 12, 2002 will not be entered.

In view of the dismissal of the instant petition as moot, the \$1,280 fee submitted therefor is unnecessary. Accordingly, as authorized, this fee will be refunded to Deposit Account No. 23-1925 in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being returned to Technology Center Art Unit 2633 for examination in due course.



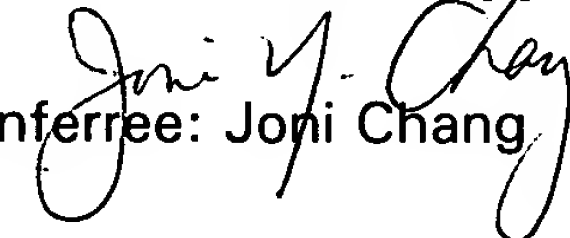
Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner

for Patent Examination Policy


Conferree: Joni Chang